

1 CHRISTOPHER M. YOUNG (Bar No. 163319)
2 KATHERINE J. LARSON (Bar No. 259556)
3 **DLA PIPER LLP (US)**
4 401 B Street, Suite 1700
5 San Diego, CA 92101-4297
6 Tel: 619.699.2700
7 Fax: 619.699.2701
8 E-mail: christopher.young@dlapiper.com
9 E-mail: katherine.larson@dlapiper.com

MATT VALENTI (Bar No. 253978)
ANTICANCER, INC.
7917 Ostrow Street
San Diego, CA 92111
Tel: 858.654.2555
Fax: 858.268.4175

Attorney for Plaintiff ANTICANCER, INC.

6 RICHARD DE BODO (Bar No. 128199)
7 OLGA BERSON (Bar No. 227763)
8 **DLA PIPER LLP (US)**
9 2000 Avenue of the Stars, Suite 400, North Tower
10 Los Angeles, CA 90067
11 Tel: 310.595.3000
12 Fax: 310.595-3300
13 E-mail: richard.debodo@dlapiper.com
14 E-mail: olga.berson@dlapiper.com

Attorneys for Defendant PFIZER INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

16 ANTICANCER, INC., a California
17 Corporation,

Plaintiff,

v.

19 PFIZER INC., a Delaware Corporation;
20 CROWN BIOSCIENCE, INC., a
21 California Corporation; and DOES 1 - 10,

Defendants.

CASE NO. 11 CV 0107 JLS (RBB)

**JOINT MOTION AND STIPULATION OF
VOLUNTARY DISMISSAL, WITH
PREJUDICE**

District Judge: Hon. Janis L. Sammartino
Magistrate Judge: Ruben B. Brooks
Courtroom: 6

1 Plaintiff AntiCancer, Inc. ("AntiCancer") and Defendant Pfizer Inc. ("Pfizer") by and
2 through their respective counsel of record herein, hereby stipulate and move the Court for an
3 Order approving the voluntary dismissal of the above matter pursuant to Federal Rule of Civil
4 Procedure 41(a)(1)(ii).

5 WHEREAS on November 9, 2011, AntiCancer filed the First Amended Complaint in this
6 action, asserting claims against Pfizer for Breach of Contract, Breach of Implied Covenant of
7 Good Faith and Fair Dealing, and Unjust Enrichment (collectively, "Contract Claims"), and
8 claims for Infringement of '159 Patent and Infringement of '812 Patent.

9 WHEREAS, on November 23, 2011, Pfizer answered the First Amended Complaint and
10 asserted counterclaims against AntiCancer for Declaratory Judgment of Non Infringement and
11 Declaratory Judgment of Invalidity of the Patents In Suit.

12 WHEREAS on March 12, 2012, Pfizer filed a Motion for Summary Judgment of
13 Noninfringement Based on Defective Infringement Contentions.

14 WHEREAS on May 3, 2012, the Court ordered supplemental briefing on the issue of
15 whether the Court could/should construe Pfizer's motion for summary judgment instead as a
16 motion to strike AntiCancer's preliminary infringement contentions and to compel AntiCancer to
17 supplement its preliminary infringement contentions with more detailed information in
18 compliance with Patent Local Rule 3.1.

19 WHEREAS on June 1, 2012, the Court issued an Order granting summary judgment in
20 favor of Pfizer on AntiCancer's claim for infringement of the '812 patent, and finding
21 AntiCancer's preliminary infringement contentions regarding the '159 and '337 patents
22 insufficient to comply with Patent Local Rule 3.1;

23 WHEREAS the Court's June 1, 2012 Order granted AntiCancer an opportunity to amend
24 its preliminary infringement contentions with respect to the '159 patent and '337 patent claims on
25 the condition that AntiCancer reimburse Pfizer for the reasonable costs and attorneys' fees they
26 incurred in bringing the motion for summary judgment;

27 WHEREAS on June 22, 2012, AntiCancer filed a Second Amended Complaint asserting
28 the Contract Claims and claims for Infringement of '159 Patent and Infringement of '337 Patent.

1 WHEREAS on June 29, 2012, AntiCancer filed a Notice of Objection to the Court's
2 conditions for amendment;

3 WHEREAS on July 2, 2012, the Court entered summary judgment in favor of Defendants
4 on the claims for Infringement of '159 Patent and Infringement of '337 Patent asserted in
5 AntiCancer's Second Amended Complaint;

6 WHEREAS on July 30, 2012, the Parties appeared before Judge Brooks for a settlement
7 conference and have reached a settlement in this action and agreed to the dismissal, with
8 prejudice, of the remaining Contract Claims pending before the Court;

9 NOW THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

- 10 1. AntiCancer's Second Amended Complaint is dismissed, WITH PREJUDICE.
11 2. Each Party shall bear their respective attorney's fees and costs of suit.

12 Respectfully Submitted,

13 Dated: September 26, , 2012

14 DLA PIPER LLP (US)

15 By /s/Christopher M. Young
16 CHRISTOPHER M. YOUNG
17 Attorneys for Defendant
PFIZER INC.

18 Dated: September 26, 2012

19 ANTICANCER, INC.

20 By /s/Matt Valenti
21 MATT VALENTI
22 Attorneys for Plaintiff
23 ANTICANCER, INC.
24
25
26
27
28

1
2
3
4 **CERTIFICATE OF SERVICE**

5 I am a resident of the State of California, over the age of eighteen years, and not a party to
6 the within action. My business address is 401 B Street, Suite 1700, San Diego, California 92101-
7 4297. On September 26, 2012, I served the within document(s):

8 **JOINT MOTION AND STIPULATION OF VOLUNTARY DISMISSAL,**
9 **WITH PREJUDICE**

- 10 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s)
11 set forth below on this date before 5:00 p.m.
- 12 ☐ by placing the document(s) listed above in a sealed envelope with postage
13 thereon fully prepaid, for delivery via overnight/express service carrier at San
14 Diego, California addressed as set forth below.
- 15 ☐ by placing the document(s) listed above in a sealed envelope with postage
16 thereon fully prepaid, in the United States mail at San Diego, California
17 addressed as set forth below.
- 18 ☐ by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below on this date before the close of normal business
20 hours.
- 21 ☐ by transmitting via electronic mail a copy of the document(s) listed above in
22 .pdf format, with no transmission errors reported, to the person(s) at the e-mail
23 address(es) denoted on the Electronic Mail notice list.
- 24 ☒ I hereby certify that on the below date, I electronically filed the foregoing with
25 the Clerk of the Court using the CM/ECF system which will send notification
26 of such filing to the e-mail addresses denoted on the Electronic Mail notice list,
27 and I hereby certify that I have mailed the foregoing document or paper via the
28 United States Postal Service to the non-CM/ECF participants indicated on the
Manual Notice list.

I am readily familiar with the firm's practice of collection and processing correspondence
for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing affidavit.

I declare that I am employed in the office of a member of the Bar of or permitted to
practice before this Court at whose direction the service was made.

Executed on September 26, 2012, at San Diego, California.

24 Bonnie K. Lott
25 Bonnie K. Lott
26
27
28